

BOARD OF ENVIRONMENTAL REVIEW AGENDA ITEM

EXECUTIVE SUMMARY FOR ACTION ON ADOPTION OF RULE AMENDMENT

Agenda # III.B.1.

Agenda Item Summary: The Board has proposed amending the air quality rules to adopt and incorporate by reference recent revisions to federal regulations concerning national emission standards for hazardous air pollutants (NESHAPs) and the development of maximum achievable control technology (MACT) emission limits.

List of Affected Rules: This rulemaking would amend ARM 17.8.302(1)(f).

Affected Parties Summary: The proposed rule amendment would affect all owners or operators of air pollutant sources that emit hazardous air pollutants (HAPs) for which MACT standards are required.

Scope of Proposed Proceeding: The Board is considering final action on adoption of the amendment to the above-referenced rule as proposed in the Montana Administrative Register.

Background: This action is in response to the U.S. Environmental Protection Agency's (EPA's) direct final action noticed in the Federal Register, 67 FR 16581, amending 40 CFR Part 63 in accordance with Sections 112(g) and 112(j) of the Federal Clean Air Act (FCAA). It is necessary for the state to adopt the revisions to the federal regulations to maintain the state's delegation of authority from EPA and the state's primacy to enforce the air toxics program.

The proposed rule amendment would adopt and incorporate by reference revisions to the NESHAPs General Provisions. The General Provisions in 40 CFR Part 63 establish the framework for emission standards and other requirements developed pursuant to Section 112 of the FCAA, which requires EPA to promulgate regulations establishing emission standards for categories of sources of HAPs. The General Provisions eliminate the need to repeat general information and requirements in individual NESHAPs, by consolidating all generally applicable information in one location. The amendments to the federal regulations that would be adopted and incorporated by reference clarify the General Provisions and make them more flexible.

The proposed rule amendment also would adopt and incorporate by reference revisions to the provisions of 40 CFR Part 63 that implement Section 112(j) of the FCAA. Under Section 112 of the FCAA, EPA was required to promulgate MACT standards for all source categories within 10 years after the date of enactment of the Clean Air Act Amendments of 1990. Under Section 112(j), if EPA missed the deadline by 18 months (May 15, 2002), owners or operators of major sources in categories for which EPA has not promulgated a standard are required to submit applications to the permitting authority (the Department) to revise their facility's operating permit to contain emission limits equivalent to the limits that would apply if EPA had promulgated the standard.

The revisions to 40 CFR Part 63 modify regulations regarding the timing of permit applications

and the timing and procedures for application of MACT standards. Under the revisions, MACT standards for new sources will apply when a facility's operating permit is issued, rather than 18 months after the FCAA's deadline for development of the standards. The revisions create a two-part permit application process. Part 1, which required basic information such as source type and location, was to be submitted by May 15, 2002, by all major sources in source categories for which EPA had failed to issue MACT standards. Part 2 will require relevant process, pollutant, and control information, to allow permitting authorities to develop MACT standards for each affected facility equivalent to the standards that EPA would have developed. Part 2 application information was to be submitted to the permitting authority within 24 months after submission of the Part 1 application, or by May 15, 2004.

EPA was confident that they would have all of the standards adopted by that time, so that the second part of the application would not have to be submitted to the states and the states would not have to develop these MACT standards. However, the Department received notification in late August that EPA had reached a settlement with the Sierra Club to shorten by one year the deadline for companies to submit their Part 2 applications. The settlement is the result of a lawsuit by the Sierra Club challenging EPA's rule to extend the application deadline to May 15, 2004. Under the settlement, which was signed and filed with the D.C. Circuit Court on August 15, 2002, companies must now submit their part 2 applications by May 15, 2003. EPA must propose a rule by October 15, 2002 with the new 2003 deadline, and issue a final rule by March 15, 2003. EPA still believes that they can have all of the standards adopted by May 15, 2003.

The department is proceeding with this current rulemaking, because the Federal Register was published and is in effect now, and sources are required to comply with it. The impact of not adopting this rule would mean that sources would have had to submit the complete application to the Department by May 15 of this year.

Hearing Information: Kelly O'Sullivan conducted a public hearing on September 17, 2002, on the proposed amendment and its submission to EPA as a proposed revision to the SIP. No public comments were submitted to the Board.

Board Options: The Board may:

1. Adopt the proposed amendment as set forth in the attached Notice of Public Hearing on Proposed Amendment;
2. Adopt the proposed amendment with revisions that the Board finds are appropriate and that are consistent with the scope of the Notice of Public Hearing on Proposed Amendment and the record in this proceeding; or
3. Decide not to adopt the amendment.

DEQ Recommendation: The Department recommends that the Board adopt the proposed amendment as set forth in the original Notice of Public Hearing on Proposed Amendment.

Enclosure: The following information is attached to this summary:

1. Notice of Public Hearing on Proposed Amendment;

2. Hearing Officer Report; and
3. Draft Notice of Amendment.